

Supreme Court

No. 2018-351-M.P.

Gulliver's Tavern, Inc., d/b/a The Foxy Lady :

v. :

City of Providence, Board of Licenses, et al. :

ORDER

This matter came before a single justice of this Court, sitting as Duty Justice, on the petition of Gulliver's Tavern, Inc., d/b/a The Foxy Lady ("Petitioner") for the issuance of a Writ of Certiorari and for a stay of the decision of the City of Providence Board of Licenses ("Board") dated December 19, 2018, after hearing at which testimony was taken, and that concluded on December 17, 2018. In brief, the Board charged that Petitioner, which is the holder of several licenses issued by the City of Providence, had allowed the solicitation of prostitution on its premises, which does business as the "Foxy Lady."

In its decision, the Board revoked six licenses. Three of those licenses are liquor licenses. Pursuant to G.L. 1956 § 3-7-21, Petitioner has appealed those decisions to the Department of Business Regulation ("Department"), which will provide de novo review of the appeal. Counsel has scheduled a hearing at the Department for 3:00 p.m. today and is requesting a stay from the Department pending its de novo review.

Before this Court, Petitioner seeks review by way of certiorari of the Board's decision to revoke three licenses: an entertainment license, a food license, and a license to operate on Sundays and holidays.

When entertaining a motion to stay, this Court employs the factors set forth in Narragansett Elec. Co. v. Harsch, 367 A.2d 195 (R.I. 1976) and Town of N. Kingstown v. Int'l Ass'n of Firefighters, Local 1651, AFL-CIO, 65 A.3d 480 (R.I. 2013). Briefly under these holdings, a petitioner must make a strong showing that (1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest.

Unlike the Department, which conducts de novo review, the review of this Court is based on the record of the hearing which took place before the Board. Unfortunately the transcript of the hearing is not available to the Court at this time because it has not yet been produced. However, the Court has reviewed the findings of fact and decision prepared by the Board. That record reveals that three Providence Police Officers testified. There was no testimony presented on behalf of the Petitioner at the hearing.

Petitioner argues that the Board exceeded its authority in revoking the licenses based on insufficient evidence that Petitioner condoned or knew of illegal activity at the Foxy Lady. It further argues that it was denied due process and that the Board violated its own policy of progressive discipline when it revoked the licenses. Petitioner further argues that it would have been futile to offer testimony at the hearing because the Board was predisposed to rule against it. Petitioner additionally argues that it and the persons who work at the Foxy Lady will suffer irreparable harm if the business remains closed while the Court reviews its petition. The Board disputes those allegations and objects to the issuance of a writ of certiorari and the issuance of a stay.

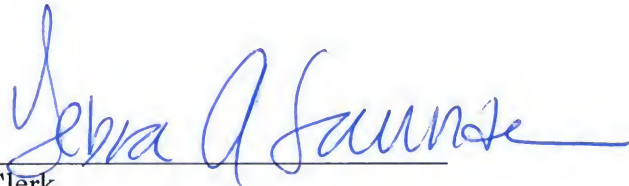
The duty justice has reviewed the written submissions of Petitioner and conferred with the parties and heard their arguments.

After doing so, the Duty Justice issues the following Order:

1. The motion for a stay of the decision of the Board is denied at this time.
2. The Petition for Writ of Certiorari is placed on this Court's conference calendar on January 3, 2019 for consideration by the full Court. The motion for stay may be reconsidered at that time by the full Court.
3. The parties may submit additional written material to the Court on or before noon on January 2, 2019.

Entered as an Order of this Court this 21st day of *December 2018*.

By Order,


Clerk